Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Petition for Rulemaking	)	
of Public Employees for	)	
Environmental Responsibility	)	**RM No. 9913**

REPLY COMMENTS OF GLOBAL CROSSING LTD.

In accordance with Section 1.405 of the Commission's rules, 47 C.F.R. § 1.405, Global Crossing Ltd. ("Global Crossing"), by its undersigned counsel, hereby submits its reply comments on the Petition for Rulemaking ("Petition") of the Public Employees for Environmental Responsibility ("PEER").[1]

INTRODUCTION

PEER asserts in comments in support of its Petition (the "PEER Comments") that all facilities requiring Commission authorization are "major federal actions" under NEPA, and requests that the Commission amend its rules to clarify the meaning and import of that term. PEER's argument is inconsistent with established law, and its use of comments submitted by a Global Crossing affiliate and others in unrelated proceedings reflects this misunderstanding. As discussed below, nothing in PEER's comments states a basis for granting the Petition, and as Global Crossing and others urged in their oppositions, the Petition should be dismissed.

[1] *See* Public Notice, Consumer Information Bureau Reference Information Center, Petition for Rulemaking Filed, Report No. 2426 (rel. July 14, 2000). Global Crossing timely filed with the Commission its opposition to the Petition, demonstrating that the Petition does not provide a basis for amending the Commission's procedures implementing the National Environmental Policy Act ("NEPA").

DISCUSSION

PEER's comments present an extensive and complicated discussion on the meaning of "major federal action" as a basis for its Petition.[2] Essentially, PEER argues that the need for Commission authorization to construct a particular facility renders that activity a "major federal action," requiring preparation of an environmental assessment and environmental impact statement, and that the Commission's rules should be amended accordingly.

The term "major federal action" is clearly defined under Council on Environmental Quality ("CEQ") rules, and has two basic elements: (1) the proposed action has *effects* that may be "major;" and (2) the proposed action is potentially subject to "Federal control and responsibility."[3] In a deliberate change and clarification from its 1973 guidelines and early case law, the CEQ Rules were amended to plainly state that "major" is a reference to the extent of an action's environmental effects, and does not have an independent meaning regarding the extent of Federal control and responsibility.[4] PEER's extensive discussion seeking to relate the term "major" with the degree of federal involvement is inconsistent with and contrary to the existing CEQ Rules and Commission NEPA procedures.[5]

This misunderstanding of the definition of "major federal action" is reflected in PEER's illustrative use of various comments submitted to the Commission in the *AT&T/Burkittsville*

---

[2] *See* PEER Comments at 6-17.
[3] 40 C.F.R. § 1508.18.
[4] As stated in § 1508.18, "Major reinforces but does not have a meaning independent of significantly (§ 1508.27)."
[5] As to the second basic element, the CEQ Rules make clear that an action must be potentially subject to "Federal control or responsibility" to be a "federal action." If there is a federal action, the Commission's existing NEPA implementing procedures – consistent with the CEQ Rules – classify the federal action as a categorical exclusion (with exceptions for extraordinary circumstances) or an action that requires environmental review (through an environmental assessment) to determine if there are significant environmental effects that need to be studied in detail in an environmental impact statement ("EIS"). If so, an EIS is prepared on the major federal action. This straight-forward process, as implemented by the Commission, is well explained by several of the commenters in this proceeding. *See, e.g.,* Comments of AT&T Corp., at 2-4; Comments of Global Crossing, at 4-5; Comments of Tycom Networks (US) Inc., at 3-6. If there is not sufficient potential federal control or responsibility, then there is no federal action subject to NEPA.

proceeding.[6] The comments cited by PEER center on whether there is a federal action at all, *i.e.*, whether the Commission has jurisdiction or authority over a proposal under the Communications Act or any other federal law. They do not address the definition of "major federal action" or interpret NEPA, but instead focus on whether there is "Federal control or responsibility" over an action under an agency's organic statute or other federal laws.[7]

Thus, for example, in its comments in the *AT&T/Burkittsville* proceeding cited by PEER, Global Crossing stated that the Commission: (1) had no requirement to, and did not, issue any 'certificate of operation' or other authorization for the proposal at issue; (2) the Commission lacked jurisdiction to regulate the proposed facility; and, therefore, (3) there was no federal action.[8] Global Crossing's comments in the *AT&T/Burkittsville* proceeding were simply stating that the Commission did not have jurisdiction, and there was no underlying federal action by the Commission subject to NEPA review.[9] PEER may choose to disagree with the Commission's view of its authority and jurisdiction under the Communications Act in a particular situation, but it does not follow that there is a need to commence a rulemaking to further define "major Federal action" and its import.

---

[6] *See, e.g.*, PEER Comments at 8, 10-12, 14-15, 18-19 (citing Comments of AT&T Communications, Global Crossing Telecommunications, Inc., Level 3 Communications, LLC, and Joint Comments of RCN Telecom Services, Inc. and KMC Telecom Inc., *Matter of AT&T Communications Proposed Construction of Fiber Optic Signal Regeneration Facility Near Burkittsville, MD* (NSD-L-99-103)(filed Jan. 27, 2000)).

[7] In AT&T/Burkittsville, AT&T proposed to replace an existing, smaller regeneration facility with a larger signal regeneration facility for fiber optic cables at the same site. The FCC requested public comment on whether the Commission had jurisdiction over the proposal under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (i.e., whether there was a federal action). Various telecommunications companies, including Global Crossing Telecommunications, commented that the term "new construction" in Section 214 of the Communications Act of 1934 refers to "the construction of a new line or of any extension of any line" and not to "installation, replacement, or other changes in plant, operation, or equipment."

[8] *See* PEER Comments at 14, 15 and nn. 34, 35 (citing Comments of Global Crossing Telecommunications, Inc. in *Matter of AT&T Communications Construction of Fiber Optic Signal Regeneration Facility Near Burkittsville, MD* NSD-L-99-103)(filed Jan. 27, 2000)("Global Crossing Burkittsville Comments")).

[9] *Id.* at 2, 4 and 5. Global Crossing commented that the proposal constituted "other changes in plant, operation or equipment" for which federal action by the Commission (*i.e.*, section 214 authorization) is not required. Global Crossing cited the D.C. Circuit's affirmance of the Commission's decision in the *Kitchen* case as support for its comments. *Global Crossing Burkittsville Comments*, at 3-4 (quoting *Kitchen v. FCC*, 464 F.2d 801 (D.C. Cir. 1972)).

CONCLUSION

PEER offers nothing new in its comments that supports grant of its Petition. All that is presented is a confusing and, at bottom, erroneous discussion of the term "major federal action," which seems to call for a change in the Commission's rules to further clarify that term. PEER, however, fails to identify a deficiency in the existing definition of "major federal action" that justifies any change in the Commission's rules, and PEER's proposal and comments seem to be based on a fundamental misapprehension of the term's meaning. As explained above, "major federal action" is already defined in the CEQ Rules. There is nothing in the Commission's NEPA implementing procedures that changes this definition, and no federal court has overturned it. Decisions on federal jurisdiction routinely made by numerous agencies properly rely on this definition. PEER's comments do not provide a basis for a rulemaking to change or clarify this long-standing definition of "major federal action." Given that the Petition presents no legitimate basis to initiate a rulemaking, and PEER's comments add nothing new of merit, the Petition should be dismissed.

Respectfully submitted,

GLOBAL CROSSING LTD.

By: _____
Martin L. Stern
Jeffrey A. Marks
Caryn Blythe Houck
Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Avenue, N.W., Suite 500
Washington, D.C. 20006
(202) 628-1700

Sherri L. Cook
Assistant General Counsel,
Government Relations
Global Crossing Ltd.
360 N. Crescent Drive
Beverly Hills, CA 90210
(310) 385-5200

Dated: August 29, 2000

CERTIFICATE OF SERVICE

I, Joanne Little, do hereby certify that copies of the forgoing Reply Comments of Global Crossing Ltd. have been served on the persons listed below via first class mail delivery or as otherwise indicated on this 29th day of August, 2000.

Joanne Little

SERVICE LIST

Ms. Magalie Roman-Salas*
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Donald Abelson, Chief*
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6C750
Washington, DC 20554

Rebecca Arbogast*
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6A764
Washington, DC 20554

Elizabeth Nightingale*
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6A729
Washington, DC 20554

Daniel P. Meyer
Public Employees for Environmental Responsibility (PEER)
2001 S Street, NW, Suite 570
Washington, DC 20009

Gary J. Smith
Beveridge & Diamond, P.C.
1350 I Street, NW, Suite 700
Washington, DC 20005

Byron S. Kalogerou
Mary Ann Perrone
TyCom Networks (US) Inc.
Patriot's Plaza
60 Columbia Road, Building A
Morristown, NJ 07690

Scott Blake Harris
Kent D. Bressie
Harris, Wiltshire & Grannis LLP
1200 18th Street, NW, Suite 1200
Washington, DC 20036-2560

Robert L. Hoggarth, Senior Vice President
Eddie Gleason, Director Government Relations
Personal Communications Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314

John F. Clark
Perkins Coie LLP
607 Fourteenth Street, NW, Suite 800
Washington, DC 20005-2011

Andre J. Lachance
Verizon Wireless
1850 M Street, NW
Washington, DC 20036

Bruce E. Beard, General Attorney
SBC Wireless Inc.
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60195-5000

Carol Tacker, Vice President – General Counsel
SBC Wireless Inc.
17330 Preston Road
Dallas, TX 75252

Roger Toppins
Errol Phipps
SBC Communications Inc.
1401 I Street, NW, Suite 1100
Washington, DC 20005

Elizabeth A. Yockus
Mary L. Brown
WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

International Transcription Services, Inc.*
Federal Communications Commission
445 12th Street, SW, Room CYB 400
Washington, D.C. 20037

* BY HAND